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DATE : DEC-27 02:39PM
TO : 17033057230
DOCUMENT PAGES : 007
START TIME : DEC-27 02:39PM
END TIME : DEC-27 02:41PM
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FRANK J. UXA, JR.
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DONALD E. STOUT
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JO ANN M. VIBASSEN
KATHAN E. YANKE
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KYLE D. YEISLAND, P.R.D.
CHRIS S. HOLLINGSWELL, P.R.D.**
LOUISE S. HEDM ***

LAW OFFICES OF
STOUT, UXA, BUYAN & MULLINS, LLP

4 VENTURE, SUITE 500
IRVINE, CALIFORNIA 92618
(714) 450-1730
FACSIMILE: (714) 450-1764

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DATE: 12/27/2002
TO: William R. Dixon, Jr.
FAX: 703-308-7230, 703-872-9307
FROM: Don Stout
RE: SN 08482,402

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- 1) Request for Reconsideration (3 pages)
- 2) Copy of Deposit Account Monthly Statement (1 page)
- 3) Copy of Petition Decision (2 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: /
Rapoport / allowed: 05/01/2002
/ batch: 2315
U.S. Serial No. 08/482,402 /
/ CPA Filed: 06/07/95 / Group Art Unit: 1642
/ For: **DISEASE ASSOCIATED HUMAN** /
AUTOANTIBODIES SPECIFIC FOR /
HUMAN THYROID PEROXIDASE /

Commissioner for Patents
Washington, D.C. 20231

REQUEST FOR RECONSIDERATION OF PETITION DECISION OR,
ALTERNATIVELY, PETITION FOR REVIVAL OF APPLICATION

Dear Sir:

This is a request for reconsideration of the petition decision mailed on December 2, 2002, and received in our offices on December 9. A copy of the *Petition Decision* is enclosed for convenience.

The *Petition Decision* indicates that the application was properly abandoned for applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance dated May 1, 2002; therefore, due August 1, 2002, because there were insufficient funds in the undersigned's deposit account to effect issue fee payment.

Attached hereto is a copy of the Monthly Statement for the Deposit Account at issue. The authorization to pay the issue fee was mailed on July 18, 2002, and received in the offices of the PTO on July 24, 2002. Reviewing the statement, a \$4,000 deposit was made to the account on July 17, so that sufficient funds existed in the account when the authorization was mailed to pay

the issue fee. Unfortunately, substantial fee withdrawals were made by the PTO on July 23 and July 24 related to another issue fee payment and PCT fee payments, which drew the balance on account below the required amount on July 24, the date on which the charge was attempted to be made by PTO personnel. This is unfortunate, but the undersigned has been attempting to change his practice to utilize the deposit account rather than checks, in view of the PTO's desire to promote fax filing and e-filing, and this has involved huge and frequent charges to the account which are difficult to keep up with.

Of particular note is that \$5,000 was deposited to the account on July 31, 2002, one day before the due date of August 1, 2002 for payment of the subject issue fee. Thus, prior to the expiration of the period for payment of the subject issue fee, sufficient funds existed in the deposit account to cover said fee. Not once did the PTO ever attempt to re-submit the issue fee for payment against the account, nor did it ever bother to notify the undersigned of the inadvertent shortfall. In the view of the undersigned, this is an unreasonable and unacceptable level of service. Inadvertent mistakes can be made from time to time, but the undersigned has managed his deposit account responsibly, and the requirement to pay the exorbitant fee required under the "unintentional abandonment" provisions to revive the subject application in this case is unduly punitive, particularly given the PTO's own lack of consideration in failing to even bother to notify the undersigned of the problem until TWO MONTHS later, when a Notice of Abandonment was finally sent out on September 16, 2002.

Accordingly, Applicant respectfully submits that the application was improperly abandoned because sufficient funds were present in the deposit account prior to the deadline for payment of the issue fee, and the PTO reasonably should have attempted to re-charge the issue fee on the deadline, rather than merely hold the application abandoned.

If the PTO does not agree with this assertion, at the very least, Applicant requests that this submittal be regarded as a Petition to Withdraw the Subject Application from Abandonment under 37 CFR 1.137(a), on the basis that the abandonment was unavoidable. Both when the issue fee transmittal was mailed, and on July 31, 2002, before the deadline for payment of the fee, sufficient funds were present in the deposit account to cover the issue fee, and the PTO's timing in attempting to charge the fee, and failure to notify the undersigned of the insufficient funds present on July 24, when the attempted charge was made, were completely out of the control of the undersigned.

However, if the PTO refuses to revive the application as being unavoidably abandoned, then Applicant respectfully asserts that the abandonment, and the entire period of delay in since paying the issue fee, is completely unintentional, and requests that the application be revived on that basis, under 37 CFR 1.137(b).

Upon revival of the application, Applicant requests that the issue fee be charged as previously authorized, and that the application pass to issue.

The Commissioner is hereby authorized to charge any necessary fees associated with this communication to Deposit Account No. 13-5135.

Respectfully submitted,



Donald E. Stout
Registration No. 34,493

December 27, 2002
Stout, Uxa, Buyan & Mullins, LLP
4 Venture, Suite 300
Irvine, CA 92618
949-450-1750 *telephone*



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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Washington, D.C. 20231

MONTHLY STATEMENT
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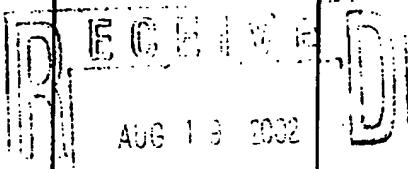
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4 VENTURE, SUITE300

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7	2	02	61	60391676	A-1849P	214	80.00	1234.00
7	2	02	336	09476187	A-1532	581	40.00	1194.00
7	9	02	60	76427518	TMI1868	361	650.00	544.00
7	17	02	10	E-REPLENISHMENT		701	-4000.00	4544.00
7	19	02	19	09100918	LS9172P	240	55.00	4489.00
7	19	02	20	09100918	LS9172P	241	605.00	3884.00
7	23	02	496	PCT/US02/22889	A-1766PCT	150	240.00	3644.00
7	23	02	497	PCT/US02/22889	A-1766PCT	153	450.00	3194.00
7	23	02	498	PCT/US02/22889	A-1766PCT	810	282.00	2912.00
7	23	02	499	PCT/US02/22889	A-1766PCT	801	45.00	2867.00
7	23	02	500	PCT/US02/22889	A-1766PCT	899	440.00	2427.00
7	23	02	501	PCT/US02/22889	A-1766PCT	566	15.00	2412.00
7	24	02	79	09246342	8388.24P	141	1280.00	1132.00
7	24	02	80	09246342	8388.24P	122	130.00	1002.00
7	25	02	13	10200109	A-1767	201	370.00	632.00
7	25	02	14	10200109	A-1767	203	90.00	542.00
7	25	02	15	10200109	A-1767	202	84.00	458.00
7	25	02	57	76433344	TMI-1855	361	325.00	133.00
7	31	02	22	E-REPLENISHMENT		701	-5000.00	5133.00
								
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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

DONALD E. STOUT
STOUT UXA BUYEN & MULLINS
4 VENTURE, SUITE 300
IRVINE CA 92618

In re Application of :
Basil Rapoport :
Serial No.: 08/482,402 : PETITION DECISION
Filed: June 7, 1995 :
Attorney Docket No.: 102105.151 :
:

This is in response to applicant's renewed petition under 37 CFR 1.181, filed December 27, 2002, to withdraw the abandonment of the above identified application based on timely filing of a reply.

A review of the file history, as previously set forth, shows that the examiner mailed a Notice of Allowance and Issue Fee Due to applicant on May 1, 2002, setting a three month statutory period for payment of the Issue Fee. Applicant submitted payment of the Issue Fee on July 18, 2002 (Certificate of Mailing date) which was received on July 24, 2002. The Issue Fee Transmittal Form directed the Office to charge the Issue Fee to Deposit Account No. 13-5135. As noted in the attachment to this decision the Office was unable to charge the Issue fee due to insufficient funds in the Deposit Account on that date (approximately July 24, 2002). Applicant was not notified of the insufficiency. That applicant had sufficient funds in the Deposit Account at a later date, prior to the final due date for payment of the Issue Fee, is not germane to whether the Issue Fee was, or could have been, charged to the Deposit Account. The relevant date is the date the fee was attempted to be charged. The application was therefor held abandoned by Notice of Abandonment mailed September 16, 2002, for failure to pay the Issue Fee. Applicant resubmitted the Issue Fee on October 1, 2002, however this was after the due date for payment thereof.

37 CFR 1.25 states:

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering services offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account § 1.21(b)(1)). A minimum deposit of \$1,000 is required for paying any fee due or in ordering any services offered by the Office. However, a minimum deposit of \$300 may be paid to establish a restricted subscription deposit account used exclusively for subscription order of patent copies as issued. At the end of each month, a deposit account statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit, Charges to accounts with insufficient funds will not be accepted.

As noted in the highlighted section it is applicants' responsibility to ensure adequate funds are on deposit for all charges made or requested. Failure to do so will cause the requested charge to not be accepted. Failure of the Office to notify applicants of insufficient funds in an account or to attempt later to charge a fee to an account places an unnecessary burden on the Office and is not done.

Applicants' renewed petition is **DENIED**.

Applicants request that this also be considered a petition under 37 CFR 1.137(a) is dismissed as insufficient evidence or explanation are provided to establish unavoidable abandonment. Applicant is again advised to promptly submit a petition under 37 CFR 1.137(b) which would allow revival of this application.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7230.

Jasemine C. Chambers
Jasemine C. Chambers
Director, Technology Center 1600